IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 22 OF 1998.

1. Jose Manuel Fijardo.

2. Martinha da Costa,
   since deceased through
   legal heirs:

(a) Jose Joaquim Fijardo.
(b) Martinha Fijardo.
(c) Eulalia Fijardo.
(d) Rosy Fijardo.
(e) Minguelinha Fijardo.
(f) Jose Assuncao Fernandes,
    all r/o Molla Guirdolim,
    Chandor, No.6 Near Green
    House, Colva. ... Appellants/
    Orig. Defendants.

VERSUS

1. Pascoal Antonio Fijardo
   since deceased through
   legal heirs:

(a) Mrs. Laura Dias,
    r/o Guirdolim, Salcete, Goa.

(b) Mrs. Maria Josefa D'Costa,
    r/o Guirdolim, Salcete, Goa.

(c) Mrs. Piedade Fernandes,
    r/o Chandor, Salcete, Goa.

(d) Mrs. Maria Antoneta,
    r/o Cuncolim, Canaguinim,
    Goa.

(e) Miss Mary Fatima Fijardo,
    r/o Guirdolim, Salcete, Goa.

(f) Antonio Fijardo,
    r/o Guirdolim, Salcete, Goa.

(g) Remedio Felipe Fijardo,
    r/o Guirdolim, Salcete, Goa.

(h) Jessie Salvador Fijardo,
    r/o Molla, Guirdolim,
    P.O. Chandor, Salcete, Goa.

2. Maria Estela Antao,
   r/o Chandor, Salcete, Goa.

3. Lourence Fijardo,
since deceased through
legal heirs:

a) Wilfred Fizardo.
b) Marvin Fizardo,
both r/o Mahim, Bombay.

4. Nicaela Elizabeth Cardozo,
r/o Mahim, Bombay.

5. Manuel S.Fijardo,
Salllalah, Sultanate of Oman. ... Respondents/
Ori. Plaintiffs.

Mr. J.E. Coelho Pereira, Senior Advocate
with Mr. S. Karpe, Advocate for the Appellants.

Mr. S.D. Lotlikar, Senior Advocate with Ms. S. Naik,
Advocate for the Respondents No.1(a) to (h) and 2.

**CORAM: N.A. BRITTO, J.**

DATE OF RESERVING THE JUDGMENT: 7.04.2004.
DATE OF PRONOUNCING THE JUDGMENT: 19.04.2004.

J U D G M E N T:

Defendant no.1 and his children in S.C.S. No.104/84 have filed the present appeal against the judgment/decree dated 31.1.1998 of the learned I Additional Civil Judge, Senior Division, Margao.

2. Some facts are required to be stated to dispose of the present appeal.

3. Pascoal Antonio, Jose Manuel and Lourenco are the three sons of Joaquim Fizardo and his wife Caetana Augustinha Da Costa. The said Jose Manuel (defendant/appellant No.1) initiated Inventory

proceedings bearing No.2/69 upon the death of his parents and in the said Inventory proceedings a property known as "Zuvolem" was described under Item/Verba No.15 alongwith their residential house. The only dispute between the parties in the said Special Civil Suit was regarding the said residential house. After the said house was described in the Inventory proceedings, it appears that the said Pascoal Fizardo (plaintiff) by his application dated 17.4.1970 raised an objection against the said enlistment and the Inventory Court directed an inquiry to be held and thereafter both the parties led evidence. The Inventory Court by its Order dated 1.10.76 came to the conclusion that the evidence advanced by the parties was not sufficient to decide whether the construction of the said house was made by the said Pascoal Antonio exclusively at his own expense and gave liberty to the said Pascal Antonio to file a Civil Suit and ordered the inventory to continue in respect of the other items.

4. The said Pascoal Antonio along with his wife Maria Estela filed the said suit on or about 27.7.84 against the other brothers and their respective wives namely Jose Manuel and Lourenco and Martinha Da Costa and Nicaela Elizabeth respectively. In the said suit the plaintiffs sought a declaration that the suit

house exclusively belongs to the plaintiffs and therefore the defendants were not entitled to remain in the said house and also for mandatory injunction ordering the eviction of the said defendants namely his brothers Jose Manuel and his wife Martinha and Lourenco and his wife Nicaela.

5. The case of the plaintiffs was that the plaintiffs had preferred an appeal against the said order of the Inventory Court, but the same was dismissed on 30.6.83. The case of the plaintiffs was that the plaintiff No.1 (Pascoal Antonio) was a seaman and had started the construction of the said house in December, 1942 and completed the same in 1943 and that after the initial work of foundation, the plaintiff no.2 (Maria Estela) had supervised the entire work of the suit house, till its completion during the absence of plaintiff no.1 abroad and the sickness of the mother and spent for the said construction including additions made afterwards of two small rooms and conversion of verandah into two rooms the amount of Rs.8000/-.

6. The plaintiffs stated that in order to grab the house, the defendants raised several objections without spending one single paisa which has been denied by the plaintiffs. The plaintiffs stated that

the contention of the defendants that their mother had spent for the construction of the house Rs.1500/- besides gold ornaments was baseless as their mother had no money nor gold ornaments. The plaintiffs stated that the mother had only three gold ornaments weighing not more than 48 gms. which were taken by defendants NO.3 and 4 when they took the mother to their respective residence in the same house saying that they would look after her till her death, but after four days they admitted her into an 'albergue' at Margao where she died after about 2-1/2 years and while taking the said mother defendants no.3 and 4 had had also taken copper articles belonging to their parents. The plaintiffs stated that defendant no.1 Jose Manuel had no means except some cattle and he had no interest in the suit house as he was to be established son-in-law of Luis Manuel Costa, their maternal uncle and the house of the latter presently belongs to defendants No.1 and 2.

7. The plaintiff stated that defendant No.3 was studying in the seminary at Rachol and thereafter at Loyola High School, Margao and thereafter in the boarding of Loyola High School, Margao at the cost of the plaintiffs and then gave up his ambition of becoming a priest.

8. The plaintiff stated that their mother requested the plaintiffs that they should allow the defendants to reside with them in the suit house till her death and the plaintiffs complied with the request of their mother and at that time the said maternal uncle Luis Manuel Costa was alive. The plaintiff stated that it was made clear at that time that the defendants should not have and would not invoke any right of any kind whatsoever to the house and despite that, they are claiming right to the suit house without any title or right to possession. The plaintiff stated that the defendants were allowed in the suit house by mere tolerance of the plaintiff and that the cause of action arose on or about 30.6.83 when the said appeal was dismissed.

9. On the other hand, it was the case of the said defendants that the said house was constructed by their mother the said CAetana Augustinha Costa at her own cost and with loan taken from her said brother Loss Manuel Costa and that the plaintiff No.1 contributed only Rs.800/- for the said construction. The defendants stated that the loan taken from the said Manuel Luis Costa was paid by defendant No.1 Jose Manuel and defendant No.3 Lourenco and the said construction was supervised by their mother the said Caetana and by defendant No.1.

10. The defendants stated that it was defendant No.1 who did arrangement of two jackfruit trees for the said construction and also for roof tiles and that the defendant No.1 some years back constructed steps for the said house and cemented it and the pillars of verandah and few years back they plastered two rooms of the said house. The defendants stated that the plaintiffs some years back constructed only two rooms in the place where there was part of a verandah of the said house. The defendants stated that their ancestral house was in the property of late Dr. Jesus Gomes in another ward at Moroda in the same village where they were residing as mundcars. The defendants stated that after the construction of the suit house was completed the said Caetana along with her children and plaintiff No.2 began to reside in the new house and the ancestral house which was very old was demolished after some time.

11. The defendants stated that plaintiff no.1 in his application dated 26.7.69 filed in the said inventory proceedings had impliedly admitted that the said house was of their deceased parents. The defendants stated that their mother was kept in the said 'albergue' by defendant No.3 at the request of their mother when he had returned to Goa from Africa on short leave as the said mother wanted to live more

independently and more peacefully and it was defendant No.3 who was providing for her maintenance. The defendants stated that all the copper articles were at that time kept in one room of the same house to avoid diverting them and after the death of their mother the same along with other movables were enlisted in the said inventory proceedings by the Court clerk upon an order passed on the application of the defendant No.3.

12. The defendants admitted that the house of Luis Manuel Costa belongs to defendants No.1 and 2 as it has been donated to them. The defendants stated that defendant no.3 left the seminary as he had no vocation. The defendants stated that they never claimed right to the suit house but what they are claiming is that the house was constructed by their mother and so it belongs to the estate which is being partitioned and assuming that the house was constructed by the plaintiffs, the construction of the same is only an improvement (bemfeitoria) done in the property of their parents and therefore the plaintiffs would have the right to recover only the expenditure incurred for the said construction and therefore the suit be dismissed.

13. The plaintiffs examined plaintiff no.2 - Maria Estela. The plaintiffs did not examine plaintiff

no.1. who admittedly is the eldest son in the family. The plaintiffs also examined one Rosario Antao (P.W.2). The plaintiffs produced some documents along with a certificate – Exh.PW1/A which included certified copies of depositions recorded of the witnesses in the inquiry conducted in the said Inventory proceedings.

14. The defendants examined defendant No.1 (D.W.1) and he too produced the same set of documents. The learned Trial Court came to the conclusion that the depositions of three witnesses from the Inventory proceedings corroborated the evidence of the plaintiffs. In fact, there were two witnesses who were examined by the plaintiffs in the Inventory proceedings namely one Ramchandra R. Naik and Nagu Vengtesh Porobo Dessai.

15. The first submission of learned senior counsel Shri Coelho Pereira is that the evidence of the said two witnesses could not be relied upon as corroborative evidence in violation of Section 33 of the Evidence Act. On the other hand, it has been submitted by learned Senior counsel Shri Lotlikar that all conditions required by section 33 of the Evidence Act were satisfied in the case of the said two witnesses and therefore the learned Trial Court was

fully justified in accepting the said evidence to buttress the case of the plaintiffs. Shri Coelho Pereira has placed reliance on the case of **Hari Prasad and others v. The State** (A.I.R. 1953 All., 660). It was observed in this case by a Division Bench of that Court that in a case where a witness is not found at the address when service of summons was sought to be effected on him, the evidence of such witness could not be brought on record under Section 33 of the Evidence Act without first making a diligent search for such a witness.

16. Both the plaintiffs as well as the defendants produced certain documents including the depositions of witnesses recorded in the said Inventory proceedings bearing No.2/69 and what P.W.1 Maria Estela produced was only a certificate from the said Inventory proceedings. Section 33 reads as follows :-

> " 33. Relevancy of certain evidence for proving, in subsequent proceedings the truth of facts therein stated. -
>
> Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial

> proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable.
>
> Provided -
>
> that the proceeding was between the same parties or their representatives in interest;
>
> that the adverse party in the first proceeding had the right and opportunity to cross-examine;
>
> that the questions in issue were substantially the same in the first as in the second proceeding.
>
> Explanation - A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

17. P.W.1 Maria Estela produced a certificate from the said Inventory proceedings without making any whisper to the depositions of the said two witnesses

namely the said Ramchandra and Nagu. The plaintiffs did not file any application seeking leave of the Court to produce the depositions of the said witnesses or giving reasons as to why they were producing the same. It is true that P.W.1 Estela in the cross-examination stated that she did not remember the names of the labourers who were engaged by them and that the said labourers as well as the contractor were not living. Likewise, P.W.2 Rosario Antao also made a statement in his cross-examination that the said Nagu had died. In my opinion, the fact of death of either the said Ramchandra or for that matter Nagu was not sufficiently proved by the plaintiffs before the Trial Court nor the plaintiffs filed any application expressly stating that they were producing the previous depositions of the said two witnesses under Section 33 of the Evidence Act nor specifically stated before the trial Court at the time of production of the depositions of the said witnesses that they were producing the same to be relied upon because the said witnesses were dead or could not be found. In my opinion, unless that was done, the said depositions of the said two witnesses could not be used under Section 33 of the Evidence Act. In my opinion, therefore, the evidence of the said two witnesses, by rather vague statements by P.W.1 that all witnesses were not living, or by P.W.2 that Nagu was dead, in the

cross-examination was not sufficient compliance of the requirements of Section 33 of the Evidence Act, and therefore the learned Trial Court was not justified in accepting the said evidence of the said two witnesses which was almost surreptitiously produced, as corroborative evidence to buttress the case of the plaintiffs.

18. The learned trial Court has also come to the conclusion that the evidence of P.W.2 supported the case of the plaintiffs. P.W.2 Rosario stated that when the foundation of the house was laid by the plaintiffs, many persons were there, but the defendants and their family members were not there. It is to be noted that it was not the case of the plaintiffs that at the time when the plaintiffs laid the foundation stone for the said house, the relations between their mother and for that matter the other brothers were strained for the other family members not to remain present for the said foundation laying ceremony and it is difficult to accept that the plaintiffs would have called many other persons and would not have called the members of his own family. P.W.2 further stated that the mother namely Caetana and the defendants were staying in a separate ward as mundcars in the house belonging to Jose Gomes. However, it has been admitted by P.W.1 Maria Estela

that all the family members including the defendants came to reside in the suit house with their belongings and it follows therefrom that the entire family was residing together in the said mundcarial house before all of them shifted to the new house after its completion. P.W.2 Rosario further stated that the said mother and the defendants were on the streets which statement could not have been accepted because as already stated by P.W.1 Maria Estela the entire family had moved into the new house and therefore P.W.2 could not have known whether Caetana had requested the plaintiff no.1 to permit her to live in the new house. Certainly is not the case of P.W.2 Rosario that he was present when the entire family moved into the new house. In cross-examination P.W.2 Rosario stated that the foundation was laid in the year 1949 and this shows that P.W.2 Rosario does not have a good memory at all since it was the case of the plaintiffs that their construction began in the year 1942. P.W.2 Rosario stated that he knew the facts of the case because Pascoal (plaintiff no.1) had told him about the same but was then quick to say that the facts were known to him personally long back. It certainly appears more probable that P.W.2 Rosario has repeated what was told to him by Pascoal. One fails to understand as to how P.W.2 did not know that the marriage of the said Jose Joaquim was celebrated in

the suit house in case he otherwise knew what was going on in the family. He was asked whether he had any proof that the suit house was constructed by the said Pascoal of his own income and he answered the question by stating that his father and his family had a bar and a shop in the same village which Pascoal used to visit, requesting them to give food to one Nagu and his brother Kashinath as they were transporting laterite stones in bullock carts to the place of construction of Pascoal and thereafter the said Pascoal used to come to their shop to make the payment after deducting the price of the food given by them to the said Nagu and Kashinath and this Pascoal continued to do for a period of five to six months.. It is to be noted that this version of P.W.2 Rosario was not a version pleaded by the plaintiffs or for that matter narrated by P.W.1 Maria Estela. In fact, it is not even a version given by the said Nagu in his deposition in the Inventory proceedings. It was the case of the plaintiffs that the said Pascoal went on board the ship as stated by some witnesses after laying the foundation stone and as stated by other witnesses after completion of the plinth area and came back only after the house was completed and if that was so, the said Pascoal could not have gone to the said shop or bar of the family of P.W.2 to make the payments for five to six months. In fact, there

was nothing corroborative in the said version given by P.W.2 Rosario. That apart it is not at all common that the persons who are engaged to cart stones by bullock carts are required to be given any food and the version of P.W.2 on that score appears to be improbable. Moreover P.W.2 Rosario has admitted that theirs was a liquor shop, tea shop and a grocery shop and has common knowledge goes no food is provided in such shops. P.W.2 stated that the said Jose Manuel was doing the work of shepherd but there is sufficient evidence on record to suggest that he had cattle of his own and therefore could also have income of his own. P.W.2 Rosario further stated that the defendants had a small field which was not sufficient for them to maintain themselves. Here again the statement of the said Pascoal recorded in the inventory proceedings showed that his mother, after the death of his father, was paying the debt (of the purchase of the property) partially with the money received from the sale of paddy produced in the field of Comunidade besides the income received from the paddy field of the family. It is therefore obvious that P.W.2 was certainly not deposing as to the correct facts. P.W.2 Rosario who otherwise claims to have known everything, surprisingly did not know whether Pascoal had renovated the house because he did not go by that side. In my opinion, the evidence of P.W.2 was not at

all corroborative of the evidence of P.W.1 Maria Estela. It had to be noted that the said P.W.2 Rosario was not even a member of the family of the plaintiffs and the defendants nor their close neighbour so as to know what was actually going on in the family. He was a resident of another village which was situated at a distance of about 2 to 3 kms. considering that he has stated that his house was at a distance of about 10 to 15 minutes walk. As already stated it was the case of the plaintiffs that while Pascoal remained on board the ship the construction of the house was being looked after by P.W.1 Maria Estela and being so there was absolutely no necessity for the plaintiffs to have entrusted P.W.2 to make any payments to the persons who transported the stones for the construction of the said house. The evidence of P.W.2 Rosario could not be taken as corroborative evidence to the version given by P.W.1 Maria Estela.

19. That leaves the case of the plaintiffs with the version of P.W.1 Maria Estela as against the version of the said D.W.1 Jose Manuel. There is no doubt that the construction licence was obtained in the name of the said Pascoal and the explanation given by the defendants is that because their mother was illiterate that the said licence was taken in the name of the said Pascoal. However there could have been another

explanation. Admittedly the family of the plaintiffs and the defendants were residing in the said mundcarial house and it was understood that only the said Pascoal would get married and reside in the property where subsequently the house came to be constructed, the said property having been purchased by the father of the said Pascoal with contribution of about Rs.1000/- from the said Pascoal and the loan taken from their maternal uncle the said Luis Manuel. It was a plan of the family that the said house would be required only by the said Pascoal and it was the plan of the family that the said Jose Manuel would get the house of the said maternal uncle after the said Jose Manuel got married to the said uncle's daughter and the said Lourenco had plans to become a priest and therefore did not require the house. P.W.1 Maria Estela stated that the money for the construction of the house was spent by her husband as he was earning as a seaman. The plaintiffs have given no explanation whatsoever as to why the plaintiffs chose not to examine the said Pascoal in the case, if it is he who constructed the house from his earnings as a seaman. As far as this aspect of the case is concerned, the plaintiffs have two more versions. The second version being that the money was also spent from the dowry received by the said Pascoal and the third version being that a loan was taken from P.W.1 Maria Estela

from her parents. P.W.1 Maria Estela stated that plaintiff No.1 personally supervised the construction of the house upto the plinth level and then went on board the ship. But here again there appears to be two other versions, one being that he went on board the ship soon after the foundation stone was laid and the second that he went on board the ship after the walls were completed. The plaintiffs had pleaded that after the initial work of foundation plaintiff no.2 Maria Estela had supervised the entire work which means that the said Pascoal was not present when the house had reached the plinth level. The plaintiffs had further pleaded that defendant No.1 - Jose Manuel had no means except some cattle but P.W.1 Maria Estela stated before the court that defendant no.1 was not having any work but was taking care of their cattle which statement is not only contrary to the pleadings of the plaintiffs but also contrary to what her husband had stated before the court in the inventory proceedings to which I have already made a reference. P.W.1 Maria Estela stated that the suit property was purchased by her husband the said Pascoal about 4 years prior to the construction of the house. However, I have already recorded the concession made on behalf of the plaintiffs that the plaintiffs did not claim any right to the said property and I have already referred to the statement of the said Pascoal

which shows that the property was purchased by their father with the contribution of Rs.1000/- from the said Pascoal and a loan from the said maternal uncle. The statement of P.W.1 Maria Estela that the suit property was purchased by her husband Pascoal only goes to show to what extent one can go on making false statement to support a false claim. P.W.1 Maria Estela as already stated, has admitted that the defendants were residing in the suit house from the time of its construction. She has also admitted that the defendant no.1 Jose Manuel had plastered two rooms and pillars but she has added to say that it was done against her wish, but she has not stated as to what action she took against the said acts of the said Jose Manuel. P.W.2 Rosario has also conceded that the suit house was partitioned after about 2 to 3 years and Pascoal's mother had kept one room for Pascoal in the said new house. P.W.2 Rosario however stated that he did not know whether the portion where Pascoal is residing whether defendant no.1 Jose Manuel has an access to it because he had not gone inside the house. P.W.2 Rosario further stated that he did not know whether there were boundary marks fixed outside the house separating the portion of Pascoal and that of defendants No.1 and 3. The statement of said Pascoal recorded in the inventory proceedings shows that the construction of the new house was being made for his

residence and that of his family as his brother Jose Manuel was about to reside in the house to be gifted by his maternal uncle and his other brother Lourenco was becoming a priest. The evidence of the said Pascoal also shows that their mother had told him that it was her desire that half of the house be given to the said Lourenco after the said Lourenco abandoned the seminary as he did not wish to become a priest and by this time the said Jose Manuel raised a point that the house should be divided into three equal parts, one each to the three brothers and then the quarrel started. In other words the statement of the said Pascoal shows that the claims to the house were raised by all the three brothers soon after the said house was constructed and during the lifetime of their mother. The said Pascoal had further stated that thereafter one Glen Carvalho who was then‘ Regedor’ and one Plotino Costa were brought in to settle the differences. In their presence he (Pascoal) has stated that he was ready to receive the money spent in the construction and to transfer the house to his two brothers. This stand of the said Pascoal at that stage clearly showed that the said Pascoal had not exclusively spent money for the construction of the suit house. The said Pascoal further stated in the said statement that accounts were made in the presence of the said two persons and the total amount spent for

construction was fixed and the said Glen Carvalho asked his mother and the other two brothers if any of them had spent any money for construction of the house and their reply was in the negative. However, from the deposition of the said Pascoal, it appears that the said compromise was not given effect to. On the other hand, D.W.1 Jose Manuel has stated that the suit house was constructed by their mother by carting laterite stones to the suit property. This last statement of D.W.1 Jose Manuel is supported by the evidence of those witnesses whose statements were recorded in the inventory proceedings and on which statements the Plaintiffs seek to rely. He also stated that he used to plough the field and after selling the paddy he used to get money from the same, and whatever paddy he sold the money was taken by his mother. He further stated that the house was not divided but a part of the house is occupied by the plaintiffs and the remaining part is partly occupied by him and the remaining defendants and that the portion occupied by him was demarcated by putting boundary stones at loco separating the portion of the said house. He stated that the boundary stones were put on the site after about a year of the construction of the house when the mother was alive. The evidence of the said Pascoal recorded in the inventory proceedings,the evidence of P.W.2 Rosario and evidence

of DW.1 Jose Manuel shows that there was a disputed about the ownership of the house soon after the house was completed and during the lifetime of their mother and all the three brothers have been occupying different portions of the house at least from the year 1943 or thereabout till the inventory proceedings were filed by defendant No.1 Jose Manuel in the year 1969, for almost for a period of over 25 years. This factual position militates against the plea of the plaintiffs that the defendants have been residing in the suit house by mere tolerance of the plaintiffs. On the contrary, the said facts support the story of the defendants that the house was constructed with the contribution of the said Pascoal as well as their mother as well as the said Jose Manuel. The plea of the plaintiffs that their mother or two brothers had no sufficient means was demolished by the said Pascoal himself in the inventory proceedings . As already stated the very fact the parties divided the house physically soon after it was built is destructive of the plea of the plaintiffs that the said house was constructed exclusively by the plaintiffs themselves. The case of the plaintiffs rested solely on the version given by P.W.1 Maria Estela as against the version given by D.W.1 Jose Manuel. The Hon'ble Supreme Court in the case of **Smt. Rebti Devi v. Ram Dutt and another** (A.I.R. 1998 S.C., 310) has observed

that when both the sides lead evidence the question of burden of proof pales into insignificance. P.W.1 Maria Estela has been found to be unworthy of credit in many of the statements made by her and the said Pascoal himself who would have been the best person to depose has not come before the court to support the story pleaded by the plaintiffs. In my opinion, considering the evidence on record, the plaintiffs had failed to prove that the suit house was exclusively constructed by the plaintiffs. The learned Trial Court has read the evidence led by the parties very superficially and found that the evidence of the said two witnesses who were examined in the inventory proceedings was corroborative to the evidence of the plaintiffs. One cannot forget to note that on the very evidence led by the parties in the inventory proceedings the Court had concluded that the evidence was not sufficient to hold that the suit construction was done by the said Pascoal exclusively at his own expense. The learned trial Court ought to have given the same finding considering that the version given by P.W.1 Maria Estela could not have been accepted on a number of facts and was otherwise not corroborated by any other evidence except the licence. The learned Trial Court therefore ought to have dismissed the suit filed by the plaintiffs.

20. In view of the above the appeal is bound to succeed. The judgment and decree of the trial Court dated 31.1.1998 is hereby set aside. Consequently the suit filed by the plaintiffs is hereby dismissed. Considering the facts, there will be no order as to costs.

**N.A. BRITTO, J.**

sl.